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NO. 73-1035

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1973

MRS. HELEN PITCHER
AND MANSON PITCHER

Petitioners

V.

IBERIA PARISH SCHOOL BOARD

Respondent

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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MAY IT PLEASE THE COURT:

This brief will be concise and short. It will address itself to the principal issue raised by the petitioners, namely, whether the regulation adopted by the Iberia Parish School Board caused Mrs. Pitcher to be unconstitutionally deprived of her right to privacy.

The claim falls short of substantial merit. Petitioner complains of an indiscriminate denial of her right to privacy by requiring her to certify her medical fitness to perform her employment as a teacher. She claims that this would violate her right to privileged communications between she and her doctor. This argument, however, overlooks the essence of the question, namely, whether

the action of the Board is grounded in furtherance of a legitimate public interest for the children in the system and the functional ability of their teachers. The Board's role in requiring the examination amounts to nothing more than a precautionary exercise of its role as employer charged with the responsibility of staffing over 660 teaching positions. This certainly is a legitimate administrative function. The Board in this case was doing nothing more than any private employer expects and requires of employees in pre-employment and periodic health examinations. Only the conclusion of the physician on the teacher's fitness was submitted to the Board, not the detailed form setting forth personal histories and other private physical

matters. The School Board could not "compel" the teacher to undergo an examination. Proper recourse would be dismissal of the employee who places her own right of privacy before her employment continuity.

The requirement for medical examinations as a legitimate area of public concern has long been recognized by courts for public protection from the mentally ill, SCHWARTZ V. THIEL, 242 Cal. App. 2d 799, 51 Cal.R. 767, in preventing communicable diseases, SIMONSEN V. SWENSON, 104 Neb. 224, 177 NW 831, for legitimate scientific purposes, GRIFFIN V. MEDICAL SOCIETY OF NEW YORK, 7 Misc. 2d 549, 11 NYS 2d 109, and for the overriding interest of the government as to the welfare and fitness of its military personnel,

CLARK V. GUARACI, 29 Misc. 2d 791, 208 NYS 2d 564.

Clearly, therefore, the School Board has the right to require medical examinations from all of its personnel (as it did) to assure their fitness and competency to perform as well as to safeguard and protect the school children (and all of the other employees) from communicable disease and to make proper personnel assignments.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be denied.

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